

Committee: Licensing Sub Committee	Date 12/10/21	Classification Unclassified	Report No.	Agenda Item No.
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Report of: David Tolley Head of Environmental Health & Trading Standards	Title: Licensing Act 2003 Application for a new Premise Licence for Caligan Limited. 459 Railway Arch, Robeson Street, London, E3 4JA
Originating Officer: Corinne Holland Licensing Officer	Ward affected: Mile End

1.0 **Summary**

Applicant: **Caligan Limited**

Name and Address of Premises: **Caligan Limited
Railway Arch 459
Robeson Street
London
E3 4JA**

Licence sought: **Licensing Act 2003
Sale by retail of Alcohol**

Objectors: **Resident Petition**

2.0 **Recommendations**

2.1 That the Licensing Committee considers the application and objections then adjudicate accordingly.

LOCAL GOVERNMENT 2000 (Section 97)
LIST OF "BACKGROUND PAPERS" USED IN THE DRAFTING OF THIS REPORT

Brief description of "background paper"

Tick if copy supplied for register

If not supplied, name and telephone number of holder

File
Section 182 Guidance
LBTH Licensing Policy

Corinne Holland
020 7364 3986

3.0 **Background**

- 3.1 This is an application for a new Premise Licence for Railway Arch 459, Robeson Street, London, E3 4JA
- 3.2 The applicant has described the premises as: Fulfilling orders for e-commerce platforms for consumption off the premises. Despatch to take place between 07:00 – 23:00 hours daily.
- 3.3 **Petition** – This was received after the close of the 28 day consultation period, but the Licensing Authority had moved addresses and the re-direction of post had ceased. The blue notice displayed at the premises had the Licensing Authorities old address on it, but at the time this was the notice on the councils website, so the applicant was not at fault. Evidence that the petition had been posted prior to the end of the consultation period (1st class signed for) was provided to the Licensing Authority. Therefore the petition was accepted as valid.
- 3.4 A copy of the application is shown in **Appendix 1**.
- 3.5 The hours applied for are as follows:

Sale of Alcohol (off sales)

Monday – Sunday 07:00 – 23:00 hours

Opening Hours:

Monday – Sunday 06:00 – 23:00 hours

Premises are not open to the public

4.0 **Location and Nature of the premises**

- 4.1 The site plan of the venue is included as **Appendix 2**.
- 4.2 Maps showing the vicinity are included as **Appendix 3**.
- 4.3 Photographs of the premises are included in **Appendix 4**.
- 4.4 Details of other licensed venues in the immediate vicinity are included as **Appendix 5**.

5.0 **Licensing Policy and Government Advice**

- 5.1 The Council has adopted a licensing policy and this is available from the Licensing Section, and at the hearing. The revised policy came into effect on 1st November 2018.
- 5.2 Relevant Sections of the policy are brought to the attention of Members within the Licensing Officers report.

- 5.3 The Home Secretary has issued Guidance under Section 182 of the Licensing Act 2003. This is available on the Government's website, www.homeoffice.gov.uk. It was last revised in April 2018.
- 5.4 Relevant Sections of this advice are brought to Members attention within the Licensing Officers report. Members should note however, that in some areas Tower Hamlets, after a proper consideration of local circumstances, has not followed the Government's advice, or has developed it further.

6.0 Representations

- 6.1 All representations have to meet basic legal and administrative requirements. If they fail to do so they cannot be accepted. When rejected the person sending in the representation must be written to, and an explanation for rejection given in writing.
- 6.2 A responsible authority or other person can make a representation. There are two tests for other persons and only one for a responsible authority. The two tests are contained in Section 18 of the Act.
- 6.3 All representations must be "about the likely effect of the grant of the premises licence on the promotion of the licensing objectives." Likely means something that will probably happen, i.e. on balance more likely than not.
- 6.4 Representations by responsible authorities do not have to meet the second test of not being vexatious and frivolous. Other persons have to meet this test.
- 6.5 The Home Office recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation.
- 6.6 Section 182 Advice by the Home Office concerning relevant, vexatious and frivolous representations is attached as **Appendix 6**.
- 6.7 All the representations in this report have been considered by the relevant officer (Team Leader Licensing & Safety) and determined to have met the requirements of the Licensing Act 2003.
- 6.8 This hearing is required by the Licensing Act 2003, because relevant representations have been made by the following.
- Resident petition - **Appendix 7**
- 6.9 All of the responsible authorities have been consulted about this application. They are as follows:
- The Licensing Authority

- The Metropolitan Police
- The LFEPA (the London Fire and Emergency Planning Authority).
- Planning
- Health and Safety
- Noise (Environmental Health)
- Trading Standards
- Child Protection
- Public Health
- Home office (Immigration Enforcement)

6.10 In addition the application was required to be advertised in a local newspaper and by a blue poster. Only objections that relate to the following licensing objectives are relevant:

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance
- the protection of children from harm

6.11 The objections relate to:

- Public nuisance
- Crime & disorder

6.12 Essentially, the relevant parties oppose the application because the applicant has not explained how within the context of the application they will meet licensing objective of the prevention of public nuisance and the prevention of crime and disorder.

6.13 There are strict time limits to any representations. The time limits are contained in The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005.

6.14 The applicant has offered measures in the operating schedule of the application that address the promotion of the Licensing Objectives. If there were no representations, the Licensing Authority would grant the licence, with conditions consistent with the operating schedule, which are relevant, proportionate and enforceable. Members are asked to consider the schedule and incorporate any conditions as necessary to address the licensing objectives.

7.0 Conditions consistent with Operating Schedule

1. No access to the public.
2. The supply of alcohol shall be by way of delivery only.
3. The Applicant shall notify the Licensing Authority of the digital platform(s) used for the sales of alcohol and any changes to those platforms.

4. No deliveries from or to the premises shall take place between 23:00 and 07:00 hours on the following day.
5. All off-sales are to be in sealed containers.
6. Alcohol shall only be delivered to a residential or business address and not to a public place.
7. A CCTV system shall be installed at the premises. The CCTV system shall be maintained in working condition and record the premises 24 hours every day. Recordings to be retained for a minimum of 31 days and be made available to the Police or officers of the Council upon request and be of evidential quality. Staff working at the premises will be trained in the use of the equipment and a log will be kept to verify this.
8. A warning shall be displayed on the digital platform on which an order is placed informing customers that they must be aged 18 or over to make a purchase of alcohol and notifying customers that the person executing the delivery will carry out age verification on delivery.
9. The customer will be required to declare that he or she aged 18 or over. If the person executing the delivery is not satisfied that the customer is aged 18 or over any alcohol in the order will be withheld.
10. A signature at the point of delivery must be obtained. No delivery shall be left without a signature.
11. Every third party courier delivery box shall be labelled with the words "Age Restricted Product" or be readily identifiable as an age restricted product to the person delivering it.
12. The applicant and his agents shall adopt a "Challenge 25" policy where all customers accepting deliveries who appear to be under the age of 25 will be asked for proof of their age before that delivery can take place. The following proofs of age are the only ones to be accepted :
 - Proof of age cards bearing the "Pass" hologram symbol
 - UK Photo Driving licence
 - Passport.
13. The licensee shall keep a log of all refused sales. The log will contain the details of the time and date, personal details provided by the attempting purchaser, description of the products they attempted to purchase and the reason why the sale was refused. The refusals log is to be made available for inspection by any responsible authority.

8.0 Conditions Agreed/Requested by Responsible Authority

Conditions agreed with the Noise Team – **Appendix – 8**

1. No idling of vehicles, being delivery vehicles outside the premise whilst premise is in operation.
2. No noise generated on the premises, or by its associated plant or equipment, shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a public nuisance.

9.0 Licensing Officer Comments

9.1 The Live Music Act removed licensing requirements for the following:

- amplified live music and recorded music between 8am and 11pm before audiences of no more than 500 people on premises authorised to sell alcohol for consumption on the premises;
- unamplified live music between 8am and 11pm in all venues.
- Further exemptions apply see Section 16.5-16.6 of Section 182 Guidance.

9.2 The following is intended to advise Members of the relevant aspects of the Boroughs Licensing Policy, guidance from the Secretary of State, legislation and good practice. Members may depart from the Council's Licensing Policy and/or Government advice, provide they consider it appropriate to do so, and have clear reasons for their decision.

9.3 Guidance issued under section 182 of the Licensing Act 2003

- ❖ As stated in the guidance it is “provided to licensing authorities in relation to the carrying out of their functions under the 2003 Act.” It is a key medium for promoting best practice, ensuring consistent application and promoting fairness equal treatment and proportionality (1.7).
- ❖ Also “as long as licensing authorities have properly understood this Guidance, they may depart from it if they have good reason to do so and can provide full reasons. Departure from this Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.” Therefore licensing authorities will need to give full reasons for their actions (1.9).
- ❖ Also Members should note “A Licensing Authority may depart from its own policy if the individual circumstances of any case merit such a decision in the interests of the promotion of the licensing objectives.” (1.12)

- ❖ Also, “The licensing authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives.” Therefore, conditions may not be imposed for the purpose other than promoting the licensing objectives and in some cases no additional conditions will be appropriate. (10.8)
- ❖ Necessary conditions should emerge from a risk assessment by the applicant, which should then be reflected in the operating schedule (10.4).
- ❖ The Guidance states: “Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested.” (10.14)
- ❖ Mandatory conditions must be imposed (10.27) and censorship avoided (10.17).
- ❖ The Guidance states: “It is still permitted to sell alcohol using promotions (as long as they are compatible with any other licensing condition that may be in force), and the relevant person should ensure that the price of the alcohol is not less than the permitted price. Detailed guidance on the use of promotions is given in the guidance document available on the Gov.uk website.” (10.60) Also, “Licensing authorities should not attach standardised blanket conditions promoting fixed prices for alcoholic drinks to premises licences or club licences or club premises certificates in an area.” (10.21)

- 9.4 The Licensing Act 2003 permits children of any age to be on the premises which primarily sell alcohol providing they are accompanied by an adult. It is not necessary to make this a condition.
- 9.5 In all cases the Members should make their decision on the civil burden of proof, that is “the balance of probability.”
- 9.6 In all cases Members should consider whether or not primary legislation is the appropriate method of regulation and should only consider licence conditions when the circumstances in their view are not already adequately covered elsewhere.
- 9.7 The Government has advised that conditions must be tailored to the individual type, location and characteristics of the premises and events concerned. Conditions cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and

their staff and standardised conditions should be avoided where they cannot be shown to be appropriate. (1.16/1.17)

9.8 The Council's Licensing Policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible authorities.

9.9 In **Appendices 9 - 14** Members are given general advice, and also have explanations of the Council's Licensing Policy, Government advice and other legislation relating to the matters previously identified.

10.0 **Legal Comments**

10.1 The Council's legal officer will give advice at the hearing.

11.0 **Finance Comments**

11.1 There are no financial implications in this report.

12.0 Appendices

Appendix 1	A copy of the application
Appendix 2	Site Plan
Appendix 3	Maps of the surrounding area
Appendix 4	Photographs of the premises
Appendix 5	Other licensed venues in the area
Appendix 6	Section 182 Advice by the DCMS- Relevant, vexatious and frivolous representations
Appendix 7	Representations from Resident Petition
Appendix 8	Conditions agreed with Environmental Protection
Appendix 9	Licensing Officer comments on public nuisance
Appendix 10	S182 advice on public nuisance
Appendix 11	Licensing Officers comments for crime & disorder
Appendix 12	S182 advice on crime & disorder
Appendix 13	Licensing Policy relating to hours of trading
Appendix 14	Planning